

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GILBERT ELLIS,

Plaintiff,

- against -

GREENE KUSH et al.,

Defendants.

25-CV-1224 (AS) (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

This is a civil rights case for false arrest, malicious prosecution, and related claims. Defendants have filed a pending motion to dismiss. (Dkt. 62) Defendants request a stay of discovery pending determination of the motion to dismiss. (Dkt. 74.) Plaintiff opposes and has cross-moved for summary judgment (Dkt. 67), but at the same time has moved for discovery pursuant to Federal Rule of Civil Procedure 56(d). (Dkt. 65.) Plaintiff also has requested appointment of pro bono counsel. (Dkt. 73.) This order resolves the foregoing motions except for the pending motion to dismiss.

1. The Defendants' motion for a stay of discovery is GRANTED. The Court finds good cause for a stay. Defendants' motion, if successful, would be dispositive of the entire case. Even if not fully dispositive, the motion likely will narrow the 17 claims asserted by Plaintiff. The discovery Plaintiff seeks is wide-ranging, and even just narrowing the claims in dispute could materially narrow discovery. The motion is nearly fully briefed, and so prejudice from delay is diminished. With respect to Plaintiff's concern about potential spoliation, Defendants have been subject to the obligation to preserve evidence since at least the commencement of the case. A stay will not alter the prospects of preservation or spoliation.

2. Plaintiff's motion for summary judgment is premature as it comes before the motion to dismiss has been resolved and before discovery has been taken. Additionally, Plaintiff's motion is inconsistent with his motion pursuant to Federal Rule of Civil Procedure 56(d) – the purpose of which is to forestall resolution of summary judgment so that the movant may obtain discovery. Accordingly, and while this Court does not address the merits of the summary judgment motion, Plaintiff's summary judgment motions at Dkt. 65 and 67 are DENIED as premature and without prejudice.

3. In order for the Court to grant a request for appointment of pro bono counsel, the Court must find that Plaintiff has asserted a claim that "seems likely to be of substance." *Hodge v. Police Officers*, 802 F.2d 58, 60-61 (2d Cir. 1986). The Court will be in a better position to make that determination after resolution of the motion to dismiss, for which Plaintiff already has filed his opposition. Accordingly, Plaintiff's motion for appointment of pro bono counsel at Dkt. 73 is DENIED without prejudice at this time, subject to renewal if his complaint is not dismissed in its entirety.

The Clerk of Court is respectfully directed to terminate the motions at Dkts. 65, 67, and 73.

SO ORDERED.



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: June 17, 2025
New York, New York

Copies transmitted this date to all parties.